

THE COMMONWEALTH PLAN, INC.

Suite 200

2655 CAMPUS DRIVE, SAN MATEO, CALIFORNIA 94403

EXECUTIVE OFFICES

AREA CODE 415
573-1200

11345 January 10, 1980
RECORDATION NO. _____ Filed 1425

JAN 10 1980 - 1 35 PM

No. 0-310A024 11345
Date JAN 10 1980 RECORDATION NO. _____ Filed 1425
Fee \$ 50.00 JAN 10 1980 - 1 35 PM
ICC Washington, D.C. INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenues, N.W.
Washington, D.C. 20423

Attention: Mrs. Mildred Lee, Room 2227

Dear Madam Secretary:

There are handed to you herewith, for recording in compliance with the provisions of Section 20c of the Interstate Commerce Act, three (3) executed counterparts of the Railroad Equipment Leasing Agreement, dated as of January 10, 1980, and three (3) executed counterparts of the Individual Leasing Record, pertaining to and supplementing such Leasing Agreement, together with this Company's voucher in the sum of \$60.00 in payment of the required recording fees.

The following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

Name and Address of Lessor:

The Commonwealth Plan, Inc.
2655 Campus Drive, Suite 200
San Mateo, California 94403

Name and Address of Lessee:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

Name and Address of Lender:

The First National Bank of Boston
100 Federal Street
Boston, Massachusetts 02110

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Name and Address of Major Loan Participant with Lender:

Swiss Bank Corporation, San Francisco Office
120 Montgomery Street, 22nd Floor
San Francisco, California 94104

General Description of the Equipment Covered by
Railroad Equipment Leasing Agreement:

5 - 1200 H.P. Diesel Switching Locomotives
AAR Mechanical Designation DB

Identifying marks SP 2272 - 2276 inclusive

229 - 70-ton Flat Cars
AAR Mechanical Designation FC

Identifying marks

SP	520012 - 520013	} inclusive
	520015 - 520017	
	520169 - 520182	
	520184 - 520201	
	520203 - 520243	
	520245 - 520266	
	520268 - 520278	
	520280 - 520282	
	520285 - 520315	

SP	520317 - 520342	} inclusive
	520344 - 520347	
	520349 - 520362	
	520364 - 520372	
	520374 - 520383	
	520385 - 520386	
	520388 - 520395	
	520397 - 520401	
	520403 - 520404	
	520406 - 520409	

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591 - 70-ton Mechanical Refrigerator Cars
AAR Mechanical Designation RPL

Identifying marks		SPFE 453213 - 453250	
SPFE 452825 - 452840		453252 - 453255	
452843 - 452864		453257 - 453259	
452866 - 452892		453261	
452894 - 452918		453263 - 453275	
452920 - 452923		453278 - 453280	
452925 - 452926		453283 - 453300	
452928 - 453001		453302 - 453311	
453003 - 453012		453313 - 453316	
453014 - 453020		453318 - 453324	
453022 - 453023		453326 - 453327	
453025		453329 - 453336	
453027 - 453046	} inclusive	453338 - 453347	} inclusive
453048 - 453061		453349 - 453350	
453063 - 453066		453352 - 453360	
453068 - 453086		453362 - 453379	
453088 - 453093		453381 - 453403	
453095 - 453108		453405 - 453410	
453110 - 453116		453412 - 453417	
453118 - 453168		453419 - 453450	
453170 - 453179		453452 - 453458	
453181 - 453203		453460	
453205 - 453211		453462	

counterpart When recording of the Railroad Equipment Leasing Agreement has been completed, will you kindly return ~~the~~ *ALL BUT ONE* ~~original and three counterparts~~ of each document with evidence of recording endorsed thereon to our representative.

Very truly yours,

THE COMMONWEALTH PLAN, INC.


David R. Muhlitner
Counsel

DRM/glj
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

1/10/80

OFFICE OF THE SECRETARY

David R. Muhlitner, Counsel
The Commonwealth Plan, Inc.
2655^c Campus Drive
San Mateo, Calif. 94403

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/10/80 at 1:35pm , and assigned re-recording number(s). 11345 & 11345-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

This writing has been assigned to The First National Bank of Boston as security for a loan in which Swiss Bank Corporation, San Francisco Office, 120 Montgomery St., 22nd Floor, San Francisco, CA 94104, is a major loan participant with said Bank.

11345
RECORDATION NO. Filed 1425
JAN 10 1980 -1 35 PM
INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASING AGREEMENT

Railroad Equipment Leasing Agreement ("Leasing Agreement") made as of the 10th day of January, 1980, in the City of San Mateo, State of California, by and between THE COMMONWEALTH PLAN, INC. of San Mateo, California (herein called "Lessor") and SOUTHERN PACIFIC TRANSPORTATION COMPANY of San Francisco, California (herein called "Lessee").

In consideration of the mutual covenants hereinafter contained, Lessor and Lessee agree as follows:

1. Definitions. As herein used:

- (a) "Equipment" means the Equipment described in Schedule A attached hereto and made a part hereof owned by the Lessor and leased by the Lessor to the Lessee or ordered by the Lessor for lease by the Lessee as provided herein.
- (b) "Acquisition cost" of Equipment is an amount equal to the sum of the vendor's delivered price, any excise tax on the Equipment, any sales and use taxes, expenses of installation and freight and other expenses required to effect delivery of the Equipment to the Lessee.
- (c) "Monthly amortization figure" for any Equipment for each full month during the lease of such Equipment is an amount equal to the acquisition cost of the Equipment divided by the number of months shown in the following schedule:

Type of Equipment	No. of Months
All "Equipment"	120

Monthly amortization shall be taken as the close of business of the last day of each full month of the lease of the Equipment until the amortized value of the Equipment has reached zero. In the case of used Equipment, the number of months shall be mutually agreed upon by Lessor and Lessee.

- (d) "Individual Leasing Record" is a record with respect to Equipment dated the date of the acceptance for lease of the Equipment by the Lessee and setting forth a full description of the Equipment, its acquisition cost, its monthly amortization figure and such other details as the parties may desire. The Individual Leasing Record shall contain a short form of lease to be executed by each of the parties reading substantially as follows:

"The undersigned Lessor hereby leases to the undersigned Lessee, and the Lessee acknowledges delivery to it in satisfactory condition of, the Equipment described above. The covenants, terms and conditions of this lease are those appearing in a Railroad Equipment Leasing Agreement between the undersigned Lessor and Lessee dated as of January 10, 1980, which covenants, terms and conditions are hereby incorporated by reference.

THE COMMONWEALTH PLAN, INC., Lessor

By _____

SOUTHERN PACIFIC TRANSPORTATION COMPANY, Lessee

By _____"

- (e) The "aggregate amortization" of any Equipment is an amount equal to the sum total of the monthly amortization figures for each of the full months for which rent for the Equipment has been paid.
- (f) "Amortized value" of Equipment is the acquisition cost of the Equipment less its aggregate amortization.
- (g) "Bank" means The First National Bank of Boston.
- (h) (1) "Rent" for any Equipment for any full month during the term of the lease of such Equipment will be the sum of the monthly amortization figure for such Equipment plus an amount computed by multiplying the following:
 - a. The amortized value of such Equipment on the first day of such month, by
 - b. A fraction having a numerator equal to the number of days in such month and a denominator of 360, by
 - c. A percentage equal to the sum of the Base Rate of the Bank (defined as the rate of interest designated by the Bank from time to time as its Base Rate and usually charged on new 90-day unsecured loans to substantial and responsible commercial borrowers) in effect on the date of the execution of this Leasing Agreement plus one and one-half percent (1.50%); provided, however, that on the first day of each month commencing February 1, 1980, the effective rate hereunder shall be adjusted with respect to all Equipment to a percentage equal to the Bank's Base Rate in effect on the 15th day of the preceding month plus one and one-half percent (1.50%). The adjusted rate will automatically apply to Equipment without separate amendment of each Individual Leasing Record.

- (2) "Rent" for any Equipment for any partial first month during the term of the lease of such Equipment shall be an amount computed by multiplying the following:
- a. The acquisition cost of such Equipment, by
 - b. A fraction having a numerator equal to the number of days such Equipment is under lease during such partial first month and a denominator of 360, by
 - c. The percentage referred to in Section (h)(1)c.
- (3) "Contingent rent" means the amount by which the proceeds of sale of any unit of Equipment pursuant to Section 10 of this Agreement are less than they would have been because of abuse, damage, extraordinary wear and tear or excessive usage. In the event Lessor and Lessee cannot agree on the amount of contingent rent due, if any, they shall appoint a qualified independent appraiser to determine the amount and his decision shall be final; and, if the parties are unable to agree on a single qualified independent appraiser, each shall appoint one qualified independent appraiser and the two so appointed shall, if they are unable to agree on the amount of contingent rent, jointly name a third, in which event the decision of a majority of the appraisers as to the amount of contingent rent shall be final. All fees and expenses of the appraiser(s) shall be borne by the Lessee.
- (4) "Rent" for each unit of Equipment for any extension of the lease term shall be an amount for each month equal to the then fair rental value of such unit as agreed by Lessor and Lessee.

2. Agreement for Sale and Lease of Equipment. Lessor and Lessee agree that on or before January 31, 1980, Lessor shall purchase from Lessee for no more than \$23,000,000, and shall lease back to Lessee, and Lessee shall lease from Lessor, the Equipment described in Section 1(a). All such leases shall be entered into in the manner and upon the terms and conditions set forth in this Leasing Agreement. Lessor and Lessee shall evidence their agreement to lease particular units of Equipment by signing and delivering to each other an Individual Leasing Record describing the Equipment. A request by the Lessee to the Lessor to acquire particular Equipment for lease hereunder shall obligate the Lessee to lease the Equipment from the Lessor upon acceptance of the Equipment by the Lessee. All Equipment shall be acquired by the Lessor in a single transaction and simultaneously leased to Lessee in in a single transaction under an Individual Leasing Record dated within the month of January, 1980.
3. Delivery. Delivery of the Equipment shall take place at its location at the time it is accepted for lease by Lessee, and Lessor shall have no obligations or liabilities with respect to delivery of the Equipment.

4. Lease Term. The lease for each unit of Equipment shall become effective on the date the Equipment is accepted for lease by the Lessee, and the Individual Leasing Record for the Equipment shall be dated such date. Notwithstanding the foregoing, the provisions of Section 9 and the first sentence of Section 11 of this Leasing Agreement shall apply as between Lessor and Lessee with respect to any Equipment from the time the Equipment is ordered by the Lessor pursuant to a request from the Lessee. The term of the lease of each unit of Equipment shall be for a period beginning with the effective date thereof and ending ten (10) years after the last day of the month during which the effective date of the lease of the Equipment occurs unless terminated as provided in Sections 10, 11 14 or 16 hereof. Thereafter the lease may be extended from month to month until terminated by Lessee by written notice to Lessor.
5. Rent. Lessee shall pay rent monthly on the first day of each month without set-off or any other reduction whatsoever, other than adjustments of rent for the immediately preceding month. Any rent due for any partial first month shall be payable on the first day of the following month, together with the rent for such following month. Reports from Lessee shall be rendered as close to the rent payment date as possible, covering the computation of rent and other payments due hereunder for the month, adjustments on the preceding month's rent resulting from commencement or termination of individual leases during such month and other appropriate items, if any. Lessee agrees to pay interest at the rate per annum of 2% over the percentage specified in Section 1(h)(1)c on the amount of rent owing under this Leasing Agreement after such rent is due and payable.
6. Use of Equipment. Lessor and Lessee hereby acknowledge and agree that this Leasing Agreement is and is intended to be a lease and that the Equipment leased hereunder shall at all times be the sole and exclusive property of Lessor, and Lessee shall have no right, title or property therein but only the right to use the same as herein provided. So long as Lessee is not in default in any way hereunder, Lessee shall have the right to use the Equipment in the regular course of its business or the business of any subsidiary or affiliate of the Lessee and to permit others to use same for any lawful purpose. Such use shall be confined to the United States and occasional use in Canada and Mexico. Lessee shall use and operate Equipment or cause it to be used and operated only by personnel authorized by Lessee and Lessee shall use every reasonable precaution to prevent loss or damage to any Equipment. Lessor may inspect any Equipment at any reasonable time except that such right shall be limited to the extent required by applicable United States government security regulations. Lessee's employees and agents shall cooperate fully with Lessor in the investigation of any claims and suits relating to Equipment. Lessee shall comply and shall use its best efforts to cause all persons using, maintaining or operating Equipment to comply with all laws, statutes,

ordinances, rules and regulations regarding the use and operation of the Equipment. Lessee agrees that the Equipment shall at all times be used (i) in compliance with all insurance policy conditions and codes, rules, interpretations, laws or orders governing acquiring, titling, registering, leasing, insuring, and disposing of the Equipment and hire, use, condition, repair and all other matters pertaining to the movement and interchange of freight traffic applicable to the Equipment adopted and in effect from time to time by the Association of American Railroads ("AAR") and any other organization, association or local, state or federal agency or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may be responsible for or have authority over the foregoing; and (ii) in compliance with the terms of this Leasing Agreement. Lessee may sublease any Equipment provided that the sublease is subject to and in conformity with this Leasing Agreement, but no sublease shall in any way limit or affect Lessee's obligations and duties hereunder. Lessee may not assign any right or interest hereunder or permit any lien or encumbrance to remain on Equipment other than liens placed thereon by Lessor or persons claiming against Lessor but not Lessee or any predecessor in title or interest to Lessee or any person claiming through Lessee.

7. Improvement and Repair of Equipment. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of Equipment during the lease thereof. Lessee shall at all times, at its own expense, keep Equipment in first class condition and repair and in good and efficient working order, reasonable wear and tear only excepted, but Lessee shall have a reasonable time within which to repair any loss or damage to Equipment from fire or other casualty. This provision shall apply regardless of the cause of damage and all risks with respect thereto are assumed by Lessee. At its own expense, Lessee shall supply and replace all parts to the Equipment and shall supply the necessary power and other items required in the operation of the Equipment. Any replacement parts, improvements and additions to the Equipment shall become and remain the property of the Lessor, except that any improvement or addition made by the Lessee shall remain the property of the Lessee if it can be disconnected from the Equipment without impairing the functioning of the Equipment as originally constituted when first leased hereunder.
8. Identification Markings and Numbering. As soon as reasonably possible after the lease of any Equipment hereunder, the Lessee shall cause to be plainly, distinctly, permanently and conspicuously marked, placed or fastened upon each side of each unit of Equipment the following legend in letters not less than one inch in height:

"PROPERTY OF THE COMMONWEALTH PLAN, INC., OWNER AND LESSOR,
AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE I.C.C."

The Lessee will cause each unit of Equipment to bear on each side thereof at all times after delivery the car number currently assigned to it and at all times after causing it to be placed thereon, the aforesaid legend. Such car reporting marks and designated car numbers shall not be changed by the Lessee without the prior written consent of Lessor and any assignee of Lessor. Lessee agrees to file all necessary and appropriate documents with the Interstate Commerce Commission and/or any other authority as may be required under Federal, state or local law, rules or regulations with respect to any such change in car reporting marks and designated car numbers.

9. Indemnity. Lessee agrees to indemnify and hold harmless the Lessor against any and all claims, demands, and liabilities of whatsoever nature and all costs and expenses relating to or in any way arising out of:

- (a) The ordering, delivery, acquisition, title on acquisition, rejection, installation, possession, use, operation, control or disposition of the Equipment except to the extent that such costs are included in the acquisition cost of Equipment leased hereunder within the time and dollar limits provided in Section 2 hereof (or within any extension of such limits agreed to in writing by Lessor and Lessee with the approval of any assignee) and except for any general administrative expenses of Lessor;
- (b) all recording and filing fees, stamp taxes and like expenses with respect to mortgages on the Equipment from the Lessor to any mortgagee;
- (c) all costs, charges, damages or expenses for royalties and/or claims and expenses of litigation, arising out of or necessitated by the assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of any Equipment, provided, however, that Lessor will make available to Lessee all of Lessor's rights under any similar indemnification from the manufacturer of the Equipment;
- (d) all federal, state, county, municipal or other license or qualification fees and taxes whatsoever and penalties and interest thereon, whether assessed, levied against or payable by the Lessor or otherwise, with respect to the Equipment or the purchase, sale, rental, use, operation, control or ownership of Equipment or measured in any way by the value thereof or by the business of the Lessor with respect thereto, excepting taxes on the net income of the Lessor determined substantially in the same manner as net income is presently determined under the Federal Internal Revenue Code;

and Lessee shall indemnify and hold Lessor harmless against any claim with respect thereto. Lessee shall forthwith upon demand reimburse Lessor for any sum or sums expended with respect to any of the foregoing, or shall pay for such amounts directly upon request from the Lessor or Lessor's assignee. To the extent that Lessee in fact indemnifies Lessor under the indemnity provision of this Leasing Agreement, Lessee shall be subrogated to Lessor's rights in the affected transaction and shall have the right to control litigation related to the transaction and to determine the settlement of claims therein, and where all of the acquisition cost of Equipment is paid by Lessee to Lessor pursuant to this indemnity, Lessor shall convey to Lessee all of its right, title and interest in such Equipment.

10. Adjustment of Rent on Sale of Equipment. After the lease term of any Equipment has run for three months, if such Equipment has become economically or otherwise obsolete or is no longer useful in the Lessee's business, and provided that the lease has not been terminated under some other provision hereof and that there has occurred no event of default under Section 13 and no event specified in Section 11, Lessee may arrange for the termination of the lease as to and the sale of the Equipment as hereinafter provided. After written notice to the Lessor or its assignee identifying the Equipment and the proposed price and terms of a proposed sale, the Lessee, on behalf of and in cooperation with the Lessor, shall proceed directly with negotiating the sale of the Equipment to a third party unrelated to Lessee, and the Lessor shall promptly execute and transmit to the Lessee all title papers needed to effectuate the sale. In arranging for the sale of any Equipment pursuant to this Section 10, the Lessee shall use its best efforts to obtain sale proceeds not less than the Equipment's retail fair market value delivered to a purchaser or purchasers unrelated to Lessee, giving due consideration to whether the Equipment's value is higher as an aggregate, or as two or more units of Equipment. Lessee shall promptly transmit to Lessor or its assignee the proceeds of sale of such Equipment. Lessee will supply Lessor with such information as to the condition and location of such Equipment as Lessor may request. The lease term for each unit of Equipment sold and the Lessee's obligation to pay rent shall continue until the end of the month during which such proceeds of sale are transmitted to Lessor or its assignee and shall thereupon terminate. If the sale proceeds are less than the amortized value of the Equipment but equal to or greater than 13% of the base amount of the Equipment the Lessee shall at the same time pay the Lessor or its assignee a sum equal to the difference between the amount of the sale proceeds and such amortized value. If the sale proceeds are less than 13% of the base amount of the Equipment, the Lessee shall at the same time pay the Lessor or its assignee the amortized value of the Equipment less 13% of the base amount, plus any contingent rent due for such Equipment, provided, however, that the amount of any such contingent rent will be no greater than the amount by

which 13% of the base amount exceeds such sale proceeds. Any sale proceeds in excess of the amortized value of the Equipment at the date of termination of its lease term as terminated under the provisions of this Leasing Agreement will be for the account of the Lessor. The "base amount" means, as to any Equipment sold three months after the commencement of its lease term, the acquisition cost of such Equipment, and as to any Equipment sold more than three months after the commencement of its lease term, the amortized value of such Equipment at the date of termination of its lease term as terminated under the provisions of this Leasing Agreement. The term "sale proceeds" means the gross purchase price paid by the purchaser, without charge or reduction in any manner on account of any costs or expenses of sale, removal, transportation, repair, storage, delivery or similar costs or expenses, and all of such costs and expenses (if any) shall be borne by the Lessee.

11. Loss or Destruction of the Equipment. Lessee hereby assumes all risks of loss or damage to the Equipment howsoever the same may be caused. Lessee shall notify Lessor promptly upon learning of any loss or of any substantial damage to any Equipment and shall keep Lessor informed of all developments and correspondence regarding insurance rights and other rights and liabilities arising out of the loss or damage. In the event of total destruction of any of the Equipment or damage beyond repair or the commandeering, conversion or other loss of any of the Equipment, or if the use thereof by the Lessee in its regular course of business is prevented by the act of any third person or persons, or any governmental instrumentality, for a period exceeding ninety (90) days, or if any of the Equipment is attached (other than on a claim against the Lessor but not the Lessee) or is seriously damaged and the attachment is not removed or the Equipment not repaired, as the case may be, in a period of ninety (90) days, then in any such event (a) Lessee shall promptly notify Lessor in writing of such fact, (b) within ten (10) days thereafter the Lessee shall pay to the Lessor, or Lessor's assignee, an amount equal to the higher of the amount prescribed in applicable rules or regulations of the AAR or any other governing association, agency or governmental authority for the loss or destruction of such Equipment at the time of payment or the amortized value of such Equipment at the time of payment, (c) the lease of such Equipment and Lessee's obligation to pay rent shall continue until such payment has been received by the Lessor, or Lessor's assignee, and shall thereupon terminate, and (d) upon such payment all of Lessor's title to and rights in such Equipment and any insurance thereon shall automatically pass to the Lessee.
12. Surrender of Equipment. Upon the final termination of the lease as to any Equipment (other than a termination as provided for in Sections 10, 11 and 14), Lessee shall surrender each item of Equipment to the Lessor at the Lessee's property where such item of Equipment is then located or at such other place or places as may

be reasonably designated by Lessor. Lessee shall cooperate with Lessor in effecting removal of the Equipment from Lessee's property. Lessee shall pay the Lessor any amount by which the cost of removing and disposing of any Equipment exceeds the salvage value of the Equipment.

13. Events of Default. The following events of default by the Lessee shall give rise to rights on the part of the Lessor described in Section 14:

- (a) Default in the payment of rent hereunder beyond five (5) days of the date it is due; or
- (b) Default in the payment or performance of any other liability, obligation, representation, warranty or covenant of the Lessee to the Lessor and the continuance of such default for thirty (30) days after written notice to the Lessee sent by registered or certified mail by the Lessor; or
- (c) If Lessee is not generally paying its debts as they become due or becomes insolvent or commences any proceeding or takes any other action relating to itself in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition, readjustment of its debts, or for any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or any other similar act or law, of any jurisdiction, domestic or foreign, now or hereafter existing, or any action indicating its consent to, approval of, or acquiescence in, any such proceeding, the application by the Lessee for a receiver or trustee of it or for all or a substantial part of its property; the making by the Lessee of an assignment for the benefit of creditors; or the admission by the Lessee in writing of its inability to pay its debts as they mature; or
- (d) Commencement of any proceeding or the taking of other action against the Lessee in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or for any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or any other similar act or law, of any jurisdiction, domestic or foreign, now or hereafter existing; or the appointment of a receiver or trustee of the Lessee for all or a substantial part of its property; or the issuance of a warrant of attachment, execution, distraint, or similar process against any substantial part of the property of the Lessee; and the continuance of any of such events for 30 days undismissed, unbonded or undischarged.

14. Rights of Lessor Upon Default of Lessee. Upon the occurrence of any of the events of default described in Section 13 the Lessor may in its discretion do one or more of the following:

- (a) Terminate the lease of any or all Equipment leased hereunder upon five (5) days' written notice to the Lessee sent by ordinary mail;
- (b) Whether or not the lease of any or all Equipment is terminated, at Lessor's option, and without notice to the extent permitted by applicable law, cause Lessee to promptly surrender possession of any of the Equipment, including substituted parts, accessories or equipment and/or other equipment or property of the Lessor in the possession of the Lessee, wherever situated, at such location or locations as Lessor may designate or take immediate possession of any or all of the foregoing, and for such purpose, enter upon any premises without liability for doing so;
- (c) Whether or not any action has been taken under Sections 14(a) or (b) above, otherwise as owner hold, or use, or lease, sell or otherwise dispose of by public or private proceedings any Equipment or other property of Lessor as Lessor in its sole discretion may decide, subject to such duty to account to the Lessee with respect to any proceeds thereof as may be required by the provisions of this Leasing Agreement or applicable law;
- (d) Exercise any and all rights and/or remedies available to Lessor in the circumstances under any applicable statute; and/or
- (e) Proceed at law or in equity or otherwise to enforce performance by Lessee of this Leasing Agreement and/or to recover damages for breach thereof.

None of the foregoing rights and remedies is intended to be exclusive of any one or more other rights or remedies otherwise available to Lessor under this Leasing Agreement or under law, all of which shall be available cumulatively. Repossession or other return of any Equipment shall not in any event relieve the Lessee of any liability hereunder.

If, after default, Lessee fails to surrender or deliver as required hereunder such Equipment or converts or destroys any Equipment or other property of Lessor, then at Lessor's option, exercised by written notice to Lessee, Lessee shall be immediately liable to Lessor for all unpaid rent on such Equipment plus its amortized value at that time, together with all losses and damages sustained, and all costs and expenses (including without limitation, reasonable attorneys' fees and legal expenses) incurred as a result of such conversion, or destruction, or failure to surrender or deliver.

If a sale of any Equipment produces net cash proceeds to Lessor less than the amortized value of such Equipment plus the sum of all other liabilities and obligations owed by Lessee to Lessor with

respect to such Equipment, all as determined at the time such proceeds are received by Lessor, then Lessee shall in any event be liable for, and shall forthwith pay to Lessor, the amount of such deficiency. If any re-lease or rental of Equipment produces for Lessor any monthly rents and other payments in cash which are in amount less than the amounts of monthly rents and other payments which are required by this Leasing Agreement with respect to such Equipment, each determined at the time the payment is received by Lessor, then Lessee shall in any event be liable for, and shall pay to Lessor, on each monthly rental due date or on the applicable dates of such other payments (if any), as the case may be, the difference between the cash received by Lessor from such re-lease or rental and the cash amounts, in each instance, required to be paid to Lessor by this Leasing Agreement.

In any event of default by Lessee, in addition to and without limitation of any other provision of this Section 14, Lessee shall be immediately liable to Lessor for all losses and damages sustained as a result of Lessee's default, and also for all costs and expenses incurred as a result of Lessor's exercise of any right or remedy provided for or contemplated by this Leasing Agreement including, without limitation, reasonable attorneys' fees and legal expenses, and expenses of repossession, holding, preparation for sale or other disposition, and sale or other disposition.

If notice to Lessee of any repossession, sale, lease or other disposition is required by applicable law, written notice thereof given not less than ten (10) days prior thereto shall constitute reasonable notice. The obligations of Lessee to Lessor hereunder constitute one general obligation with respect to any and all Equipment.

15. Purchase of Equipment. After the expiration of the amortization period of any Equipment leased hereunder, and provided that Lessee is not in default hereunder, Lessee may purchase such Equipment at its then fair market value. The lease of such Equipment and Lessee's obligation to pay rent therefor shall continue until the purchase price has been transmitted to Lessor and shall thereupon terminate. If the parties cannot agree on the fair market value of any such Equipment, they shall select a qualified independent appraiser to determine such value and his decision shall be final.
16. Equipment to be and Remain Personal Property. It is the intention and understanding of both Lessor and Lessee that all Equipment shall be and at all times remain personal property. Lessee will obtain and record such instruments and take such steps as may be necessary to prevent any person from acquiring any rights in the Equipment paramount to the rights of the Lessor, its assignees or mortgagees by reason of such Equipment being deemed to be real property. If, notwithstanding the intention of the parties and the provisions of this Section 16, any person acquires or claims to

have acquired any rights in any Equipment paramount to the rights of the Lessor, its assignees or mortgagees, by reason of such Equipment being deemed to be real property, and such person seeks in any manner to interfere with the continued quiet enjoyment of the Equipment by the Lessee as contemplated by this Leasing Agreement, then the Lessee shall promptly notify the Lessor in writing of such fact (unless the basis for such interference is waived or eliminated to the satisfaction of the Lessor within a period of ninety (90) days from the date it is asserted) and the Lessee shall within ninety (90) days after such notice pay to the Lessor or Lessor's assignee an amount equal to the amortized value of the Equipment at the time of payment. The lease of the Equipment shall continue until such payment and shall thereupon terminate at the end of the month during which such payment shall have been received by the Lessor or Lessor's assignee; and upon such payment all of Lessor's title to and rights in such Equipment shall automatically pass to the Lessee.

17. Representations and Warranties. To induce Lessor to purchase and lease to Lessee the Equipment as provided herein, Lessee represents and warrants that:

- (a) Prior to Lessor's purchase of the Equipment from Lessee, Lessee shall have acquired good and marketable title to each unit of Equipment, free and clear of all liens, charges and encumbrances of any nature whatsoever;
- (b) Each unit of Equipment shall be in first class condition and repair and good and efficient working order prior to its purchase from Lessee or shall be put into first class condition and repair and good and efficient working order promptly thereafter and in any event prior to its disposition under Section 10;
- (c) Each unit of Equipment in first class condition and repair and good and efficient working order at the time of Lessor's purchase of such Equipment shall have at such time a retail fair market value delivered to a purchaser unrelated to Lessee not less than its acquisition cost, and each unit of Equipment at the time of Lessor's purchase of such Equipment not in first class condition and repair and good and efficient working order will have, when put into first class condition and repair and good and efficient working order, a retail fair market value delivered to a purchaser unrelated to Lessee not less than its acquisition cost;
- (d) Lessee's chief executive office and principal place of business are at San Francisco, California, and Lessee shall give Lessor thirty (30) days' prior written notice of any change of location of either;

- (e) The Equipment is intended for a use related to interstate commerce;
- (f) Lessee is a corporation duly organized, existing and in good standing under the laws of Delaware and is duly qualified in every other state where its activities require qualification, and it is in good standing under the laws of each state in which it is qualified;
- (g) Lessee has adequate corporate power to sell to Lessor the Equipment and to execute and deliver in connection therewith a bill of sale with full warranties of title ("Bill of Sale"), this Leasing Agreement, to execute and deliver the Individual Leasing Record from Lessor and other papers called for by this Leasing Agreement, and to perform the obligations provided for by all of these papers. The sale by Lessee of the Equipment and the execution and delivery by the Lessee of the foregoing papers and compliance with their terms are in compliance with Section 3440 of the Civil Code of the State of California, as amended, and do not constitute a fraudulent or presumptively fraudulent transfer of the Equipment and do not violate any provision of law and are not at variance with or in contravention of, and will not result in a breach of, any of the terms, conditions or provisions of, or constitute default under, Lessee's certificate of incorporation, bylaws, any preferred or other stock provision, or any indenture, contract, agreement or instrument to which Lessee is party or by which it is bound. The execution and delivery of the foregoing papers will not result in the creation or imposition of any lien, charge or encumbrance on the Equipment except such as may be subordinate to the rights of Lessor under this Leasing Agreement and the Individual Leasing Record hereunder;
- (h) The execution and delivery by the Lessee of the Bill of Sale, this Leasing Agreement and the Individual Leasing Record have been duly authorized by proper corporate action, and they have been duly executed and constitute the legal, authorized, valid and binding obligations of the Lessee in accordance with the terms thereof, and all documents delivered by Lessee pursuant to this Leasing Agreement shall be true and correct in all material respects;
- (i) No authorization, approval or consent of any public body, agency, commission or board, federal, state or local, is necessary or required in connection with the sale of the Equipment and the execution of the Bill of Sale, this Leasing Agreement or the Individual Leasing Record or for the assumption of the obligations of the Lessee under such papers. Specifically no such authorization, approval or consent is required under the Federal Power Act, the Public Utility Holding Company Act of 1935, the Security Act of 1933, the Trust Indenture Act of 1939, the Interstate Commerce Act or any statute of the state of California.

18. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or its assignee may, but shall not be obligated to, make advances to perform the same and take such other action as may be necessary to obtain such performance. Any payment so made and all costs and expenses incurred thereby (including reasonable attorneys' fees and expenses) shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder with interest thereon for the period expended and unpaid at the percentage rate equal to the percentage provided in Section 1(h)(1)c, from time to time in effect.
19. Additional Covenant. Lessee agrees promptly to furnish Lessor with copies of its annual and quarterly reports filed with the Interstate Commerce Commission.
20. Miscellaneous. Lessee's obligations under this Leasing Agreement shall not be diminished or otherwise affected by Lessor's negligence in respect of this Leasing Agreement. This Agreement and all rights hereunder shall be governed by the law of California. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder or under any other instrument given hereunder unless such waiver is given in writing and the same shall be binding to the extent therein provided and only upon the parties signing the same. A waiver on any one occasion shall not be construed as a waiver on any future occasion. No executory agreement shall be effective to change, modify or discharge, in whole or in part, this Leasing Agreement, or any other instrument given in connection therewith unless such executory agreement is in writing and signed by the party to be charged therewith. All rights, remedies and powers granted herein, or in any other instrument given in connection herewith, shall be cumulative and may be exercised singularly or cumulatively. All of the representations, warranties and covenants of Lessee in this Leasing Agreement shall be continuing and shall survive the termination of this Leasing Agreement.
21. Investment Tax Credit. To the extent that any Equipment leased hereunder is or becomes eligible for the investment credit under the Internal Revenue Code as now or hereafter in effect, Lessor shall elect to treat the Lessee as having acquired such Equipment and shall provide Lessee with an appropriate investment credit election provided that Lessee shall indemnify and hold harmless Lessor with respect to any adverse tax consequence other than the loss of the credit which may result from such election, and Lessee shall provide Lessor with a report or statement with respect to all Equipment as to which the investment credit election is applicable, such report or statement to be in such form as may be required for Internal Revenue Service reporting.

22. No warranties by Lessor. AS BETWEEN LESSOR AND LESSEE, ACCEPTANCE FOR LEASE OF THE EQUIPMENT BY LESSEE AND EXECUTION BY LESSEE OF AN INDIVIDUAL LEASING RECORD WITH RESPECT THERETO SHALL CONSTITUTE LESSEE'S ACKNOWLEDGEMENT AND AGREEMENT THAT THE EQUIPMENT IS IN GOOD ORDER AND CONDITION AND IS OF THE MANUFACTURE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSE AND THAT LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.
23. Assignment by Lessor of Rights Under this Leasing Agreement and Mortgages of Equipment to an Assignee. Lessee acknowledges that Lessor proposes to finance its acquisition and ownership of the Equipment by borrowing and in that connection may, as security, grant to an assignee chattel mortgages on the Equipment, it being understood, however, that such chattel mortgages shall contain a provision to the effect that as long as Lessee is not in default hereunder or under any lease, it shall be entitled to uninterrupted use of the Equipment on the terms therein provided. Lessee also acknowledges notice of the intended assignment by the Lessor to an assignee of the rents and all other sums due and to become due hereunder, all as security for obligations of the Lessor to the assignee. After such assignment the terms and provisions of this Agreement may not be altered, modified or waived without the written consent of such assignee and after such assignment and written notice thereof to the Lessee, the Lessee shall make payment of all rents and other payments due hereunder directly to the assignee, and such payments shall discharge the obligations of Lessee to Lessor hereunder to the extent of such payments. The assignment by the Lessor to the assignee of rights hereunder shall not transfer to the assignee the general title to Equipment or impose on the assignee any of the duties or obligations of the Lessor hereunder, but in all other respects the assignee shall have all the rights and benefits of the Lessor hereunder to the extent necessary to satisfy all obligations of the Lessor to the assignee under the Loan Agreement between the Lessor and the assignee dated as of January 10, 1980 pertaining to the financing of Lessor's acquisition of the Equipment.
24. Filing of Railroad Equipment Leasing Agreement. The parties agree that this Leasing Agreement shall be filed by the Lessor with the Interstate Commerce Commission in accordance with 49 USC 11303 and applicable regulations thereto. Upon any material change in this Leasing Agreement and/or in any Individual Leasing Record, the Lessee will prepare, execute, acknowledge and deliver to Lessor one or more amendments and/or supplements to this Leasing Agreement

describing units of Equipment leased hereunder and Lessor shall execute, acknowledge, and file such amendments and/or supplements with the Interstate Commerce Commission promptly upon receipt. Upon termination of the lease of any unit of Equipment Lessor and Lessee shall execute any appropriate instrument for filing with the Interstate Commerce Commission as evidence of termination of the lease of such unit of Equipment. Lessee will execute any instruments with respect to the Equipment or this Leasing Agreement considered by Lessor to be necessary or desirable under recording or filing requirements of any jurisdiction. Lessor shall in each transmittal letter to the Interstate Commerce Commission respecting the recording of documents set forth the names and addresses of Lessee, Lessor, Bank and Swiss Bank Corporation, San Francisco Office, 120 Montgomery Street, 22nd Floor, San Francisco, CA 94104, and state in said letter that Swiss Bank Corporation is a major loan participant with Bank.

25. Mileage Allowances. Lessor agrees that, unless an event of default specified in Section 13 hereof shall have occurred and be continuing, Lessee shall be entitled to receive and retain all mileage allowances, rentals and/or other compensation payable by carriers by reason of use of the Equipment (hereinafter called "Mileage") paid to Lessee, insofar as applicable laws and regulations allow.

The Lessee agrees to use the Equipment so that the Lessor shall not be obligated to make any payment to any railroad company of Mileage or other charges as a result of the use of the Equipment over the lines of such railroad company, whether because of the relationship of Mileage under load and empty mileage or otherwise, and if the Lessor shall be required to make any such payment to any railroad company, the Lessee agrees to immediately reimburse the Lessor for each such payment. For the purposes of this paragraph, railroad mileage and junction reports relating to the Equipment shall be prima facie evidence of the facts reported therein.

Notwithstanding anything contained in this Section 25, the Lessee shall remain liable for the payment of all rents and all other sums due Lessor or any Assignee of Lessor under this Leasing Agreement and for the performance and observance of all the other covenants, conditions and agreements of this Leasing Agreement.

26. Notices. All notices hereunder will be in writing or where appropriate by telex and will be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the address set forth below, or, in the case of telex, transmitted and acknowledged.

Southern Pacific
Transportation Company:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
Attention: Executive Vice President, Finance

The Commonwealth
Plan, Inc.:

The Commonwealth Plan, Inc.
2655 Campus Drive, Suite 200
San Mateo, California 94403
Attention: President

The First National
Bank of Boston:

The First National Bank of Boston
100 Federal Street
Boston, Massachusetts 02110
Attention: Miss Dorothy A. E. Nelson,
Assistant Vice President

27. Legend. This Leasing Agreement and each Individual Leasing Record shall bear the following legend:

"This writing has been assigned to The First National Bank of Boston as security for a loan in which Swiss Bank Corporation, San Francisco Office, 120 Montgomery St., 22nd Floor, San Francisco, CA 94104, is a major loan participant with said Bank."

28. Severability. Any provision of this Leasing Agreement or Individual Leasing Record which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability, without invalidating the remaining provisions hereof or of the Individual Leasing Record, and any prohibition or unenforceability of any provision hereof or thereof in any jurisdiction shall not invalidate the provision or render it unenforceable in any other jurisdiction.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Leasing Agreement as of the day and year first above written.

Attest:

David R. Muhlth
Assistant Secretary

THE COMMONWEALTH PLAN, INC., Lessor

By Bernard Goodman
President

Form Approved

DAM
Counselor

Attest:

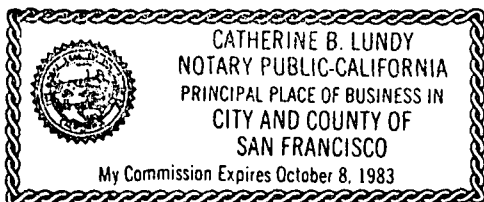
J. F. Dismell
ASSISTANT SECRETARY

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
Lessee

By Robert J. McLean
ROBERT J. McLEAN, Executive Vice President-Finance

: STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this....~~eight~~.....day of January....., 1980.,
before me personally appeared....Robert J. McLean.....,
to me personally known, who, being by me duly sworn, says
that he is.....Executive Vice President - Finance.....of
.Southern Pacific Transportation Company....., that one
of the seals affixed to the foregoing instrument is the
corporate seal of said corporation, that said instrument was
signed and sealed on behalf of said corporation by authority
of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and
deed of said corporation.

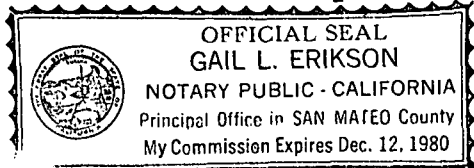


Catherine B. Lundy
Notary Public

My Commission Expires: *October 8, 1983*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN MATEO)

On this....*8th*.....day of.....January....., 1980.,
before me personally appeared..Bernard Goldman.....,
to me personally known, who, being by me duly sworn, says
that he is...President.....of
...The Commonwealth Plan, Inc....., that one
of the seals affixed to the foregoing instrument is the
corporate seal of said corporation, that said instrument was
signed and sealed on behalf of said corporation by authority
of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and
deed of said corporation.



Gail L. Erikson
Notary Public

My Commission Expires:
December 12, 1980.

RAILROAD EQUIPMENT LEASED TO
SOUTHERN PACIFIC TRANSPORTATION COMPANY
BY THE COMMONWEALTH PLAN, INC.
RAILROAD EQUIPMENT LEASING AGREEMENT
DATED AS OF JANUARY 10, 1980

5 - 1200 H.P. Diesel Switching Locomotives Price per unit:
AAR Mechanical Designation DB \$144,500.00

Identifying marks SP 2272 - 2276 inclusive

229 - 70-ton Flat Cars Price per unit:
AAR Mechanical Designation FC \$9,500.00

Identifying marks		SP	520317 - 520342	
SP 520012 - 520013	} inclusive		520344 - 520347	} inclusive
520015 - 520017			520349 - 520362	
520169 - 520182			520364 - 520372	
520184 - 520201			520374 - 520383	
520203 - 520243			520385 - 520386	
520245 - 520266			520388 - 520395	
520268 - 520278			520397 - 520401	
520280 - 520282			520403 - 520404	
520285 - 520315			520406 - 520409	

591 - 70-ton Mechanical Refrigerator Cars Price per unit:
AAR Mechanical Designation RPL \$33,000.00

Identifying marks		SPFE	453213 - 453250	
SPFE 452825 - 452840	} inclusive		453252 - 453255	} inclusive
452843 - 452864			453257 - 453259	
452866 - 452892			453261	
452894 - 452918			453263 - 453275	
452920 - 452923			453278 - 453280	
452925 - 452926			453283 - 453300	
452928 - 453001			453302 - 453311	
453003 - 453012			453313 - 453316	
453014 - 453020			453318 - 453324	
453022 - 453023			453326 - 453327	
453025			453329 - 453336	
453027 - 453046			453338 - 453347	
453048 - 453061			453349 - 453350	
453063 - 453066			453352 - 453360	
453068 - 453086			453362 - 453379	
453088 - 453093			453381 - 453403	
453095 - 453108			453405 - 453410	
453110 - 453116			453412 - 453417	
453118 - 453168			453419 - 453450	
453170 - 453179			453452 - 453458	
453181 - 453203		453460		
453205 - 453211		453462		